

Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

JAMES and SHAYLEE MEDICRAFT, *et al.*,

Plaintiffs,

v.

THE STATE OF WASHINGTON, *et al.*,

Defendants.

CASE NO. 2:21-cv-01263-BJR

PLAINTIFFS' RENEWED  
FIRST MOTION FOR PARTIAL  
SUMMARY JUDGMENT

NOTED FOR HEARING: 1/27/2023  
*Oral Argument Requested*

I. INTRODUCTION

The Washington State Legislature declares that “the family unit is a fundamental resource of American life which should be nurtured... the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized.” RCW 13.34.020. The Medicraft family unit was ruptured by the actions of the State of Washington<sup>1</sup> through an investigation that was neither complete nor unbiased, allegedly based upon a no-contact order from the State of New York which had no bearing upon Mrs. Medicraft’s ability to care for her children.

<sup>1</sup> The agency of the State of Washington involved was the Department of Children Youth and Families, referred to herein as “DCYF,” the “Department,” or the “State.”

1 Two months after the children were taken, that NCO was vacated. Even then, the  
 2 State's agents, knowing the children should be returned to their parents, refused reunification,  
 3 and continued to deprive the family of their statutory and constitutional right to be together.  
 4 During the continued custody, DCYF violated a panoply of regulations, subjecting the children  
 5 to abuse and harm..

6 Defaulted<sup>2</sup> defendant Cleveland King wrote in an email acknowledging the lifting of  
 7 the NCO *should* change the family's treatment, but "**The AAG's are worried about a tort**  
 8 **case if we return to the parents.**" Declaration of Shaylee Medicraft ("Medicraft Dec."), Exh.  
 9 1 (emphasis added).<sup>3</sup> Social Worker testimony corroborates this. Declaration of Kimberly  
 10 Booker ("Booker Dec."). Other Social Workers did not believe the children should have been  
 11 taken in the first instance. Declaration of Nathan Arnold ("Arnold Dec."), Exh. 1, Sterbick  
 12 Dep. 111:20-112.8. Instead of mitigating harm, the State, in an attempt to cover up its liability,  
 13 held the children another eight months, hoping to prevail at the upcoming dependency trial.  
 14 The outcome of the 17-day trial, however, confirmed the exposure to tort liability the State  
 15 sought to hide.  
 16  
 17

18 Eleven months after the children were taken, eight months after the NCO was vacated,  
 19 and after a 17-day Family Court trial in King County, the Honorable Susan Amini ordered  
 20 what the DCYF already knew: the children must be returned to their parents' custody *and* the  
 21 State's investigation was inadequate and incomplete. The State did not appeal. The Amini  
 22  
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<sup>2</sup> See ECF No. 73.

<sup>3</sup> The AAG on this case at that time was Defendant Derek Leuzzi, who in his pending motion to dismiss claims to have been acting solely as an attorney and not in a social worker, *e.g.* decision making, role. ECF No. 61.

1 decision is res judicata. *See*, Dkt. No. 1-1 at p. 19-30, and Exh. A.<sup>4</sup> that decision confirms the  
 2 Medicaft children should never have been taken in the first place. *Id.*

3 Attempting to establish the Medicaft children were “dependent,” the state necessarily  
 4 argued that it had made an adequate investigation that the children lacked capable parents, but  
 5 only after arguing they were in immediate danger and had to be removed from their mother  
 6 pending trial. The trial court rejected the State’s arguments, determined that the children should  
 7 not have been removed from their home and that the DCYF investigation was incomplete, and  
 8 ordered the children immediately returned; even then, DCYF defied Judge Amini’s Order and  
 9 opened a new investigation, refused to return the children, and Her Honor had to intervene.  
 10

11 Having taken the Medicaft family through that 17-day trial, after nearly a year of  
 12 wrongful custody, having failed to prove dependency (with the presupposition that its  
 13 investigation was complete and unbiased), and no appeal, including any appeal of Judge  
 14 Amini’s finding that the investigation was “incomplete,” the State is precluded by *res judicata*  
 15 and is collaterally estopped from relitigating the claims and issues asserted in that proceeding.  
 16

17 While the mission of DCYF is a laudable one, it went seriously awry regarding the  
 18 Medicafts. As Judge Amini found, based upon an “incomplete” investigation, they were  
 19 deprived of what one Defendant social worker testified was a “[v]ery loving relationship[.]”  
 20 Worse, during the long 326 days’ separation, the children were repeatedly harmed in the  
 21 custody of the State, by agents of the State. At minimum, for the eight months post-NCO, the  
 22 family should have been intact, but DCYF refused, preferring a cover-up to its mission to  
 23

24  
 25 <sup>4</sup> The Full Faith and Credit Act, 28 U.S.C. § 1738, “require[s] all federal courts to give preclusive effect to state-  
 court judgments whenever the courts of the State from which the judgments emerged would do so.” *Allen v.*  
*McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 415, 66 L. Ed. 2d 308 (1980) (applying collateral estoppel as to prior  
 state court judgment in action under 42 U.S.C. § 1983).

1 protect children.

2 The dependency proceeding established: (1) the Mediacraft children were wrongfully  
3 removed, (2) the children, at least the three oldest, were subjected to repeated, serious abuse  
4 and harm while in the custody of the State, and (3) the investigation, so-called, was not  
5 complete. Each of those holdings establishes, as a matter of law, liability, and the fact of  
6 damage. Plaintiffs seek an order of partial summary judgment to narrow issues.

7 The Washington Supreme Court issued two Opinions in August 2022, making clear  
8 that wrongful custody causes injury. “Removal carries long-term risk of serious emotional and  
9 psychological harm to the child.”<sup>5</sup> Removing a child from a non-abusive home or placing a  
10 child in an abusive home is harmful.<sup>6</sup> The State cannot credibly argue that making children  
11 sleep in cars and in overcrowded hotel rooms or offices, does not compound that harm;  
12 physically abusing them necessarily compounds the injury further. The fact of damage is  
13 further confirmed by the expert psychiatric reports of Dr. Kliman. Declaration of Nathan  
14 Arnold (“Arnold Dec.”), Exh. 2-8  
15

16 This Motion is directed exclusively at the State; any collateral estoppel effect on other  
17 Defendants is reserved. Mediacraft submits herewith additional evidence buttressing Judge  
18 Amin’s findings. Mediacraft further submits, however, that (1) additional evidence is not  
19 necessary to the grant of this Motion, and (2) the State cannot place a reasonable quantum of  
20 such additional evidence in material dispute sufficient to avoid judgment as a matter of law.  
21

## 22 **II. FACTS ESTABLISHED BY JUDGE AMINI’S FINAL JUDGMENT**

23 Mediacraft incorporates Judge Amini’s Order as though fully set forth herein and  
24

25 <sup>5</sup> *Matter of Dependency of L.C.S.*, No. 99792-6, 2022 WL 3270003, at \*7 (Wash. Aug. 11, 2022).

<sup>6</sup> *Desmet v. State by & through Dep’t of Soc. & Health Servs.*, 17 Wash. App. 2d 300, 309, 485 P.3d 356, 363, *aff’d*, No. 99893-1, 2022 WL 3270004 (Wash. Aug. 11, 2022).

specifically directs the Court’s attention to the following facts established therein. Medicaft Dec. Exhs. 2 (written order) & 3 (oral ruling, expressly incorporated into written ruling).

Pre-Removal Deprivation of Family Rights and Negligent Investigation

At the time of the state court trial, in Autumn 2020, JM was 10 years old, AM was 8 years old, EM was 7 years old, MM was 6 years old, and NM was 2 years old. Amini Order ¶ 2. The children love their mother, and they are closely bonded with their mother. Amini Order ¶ 8. JM, AM, and MM all expressed a desire to not be separated from their parents (NM’s was too young to be asked). Amini Order ¶ 47.

DCYF knew, when they took the children on December 6, 2019, that Mrs. Medicaft was able to care for them. Amini Order ¶ 10 (“Megan Meyer and Tanessa Sanchez, two DCYF social workers ... both testified to the mother’s ability to care for the children.”); *id.* ¶¶ 11–14. DCYF had no reason to believe Mr. Medicaft was unable to care for them either. Amini Order ¶ 18 (“Meyer testified that she supervised three visits between the father and children and that the father was affectionate, encouraged the children to take turns, and she had no concerns about violence or aggression during visits”); ¶ 19 (Ms. Ruelas, social worker, concurred with Ms. Meyer). Supervisor Liza Sterbick even objected to removal from their mother. Medicaft Dec. Exh. 4, Sterbick Dependency Depo. 54:22-55:16 and Arnold Dec., Exh. 1 at Sterbick Dep. 111:20-112:8, filed herewith. Despite Ms. Meyer, Ms. Sanchez, and Ms. Ruelas’ assessments, and Ms. Sterbick’s objection, DCYF removed the children in December 2019. Amini Order ¶ 52 & Medicaft Dec. Exh. 5-7.

Despite DCYF’s back-up position allegation, post-NCO, that Mrs. Medicaft would “leave with the children,” Judge Amini found, Mrs. Medicaft’s “history with DCYF, however showed that DCYF had previously removed the children, albeit for a short time, and the mother

1 had not left the state. The history of the family shows that the mother had remained in the state  
 2 with her children and worked with DCYF and the school.” *Id.* <sup>7</sup> Even if the Medicrafts were a  
 3 “flight risk,” that is not basis for the removal of children, which can only be done under certain  
 4 circumstances dictated by statute. RCW 13.34.020 & .050 (“child’s health, safety, and welfare  
 5 will be seriously endangered if not taken into custody”). The Supervisor on the case was fully  
 6 aware of the limits upon DCYF authority. Arnold Dec. Exh.9, Sterbick Depo. at 98:21 –  
 7 101:20. DCYF also failed to follow its own policies and procedures. No Family Team Decision  
 8 Meeting was held prior to removal—Sterbick, when deposed, could not recall any other time  
 9 where this critical step was omitted. Arnold Dec. Exh. 10, Sterbick Depo. 61:11 – 63:13, 82:21  
 10 – 83:9. The Department also failed to fully provide services through a safety plan. Arnold Dec.  
 11 Exh. 1, Sterbick Depo. 112:6–8.

13 Even if the Department had a basis to remove the Children from their mother (they did  
 14 not) they had the further ongoing obligation to assess the children’s father for custody *and*, if  
 15 a safety concern were determined, to provide reasonable services to ameliorate. *See* RCW  
 16 13.32.065(5)(a), former RCW 13.34.065(a)(i), and *L.C.S., infra*. If the Department had  
 17 followed its governing statutes, the Children would have remained with, at least one loving  
 18 parent during the eight months, post-NCO, prior to the dependency proceedings.

20 The Department did not perform the required complete and unbiased investigation of  
 21 the Medicraft Family. As Judge Amini succinctly found: “the investigation wasn’t done  
 22 correctly or thoroughly. And nobody listened, nobody observed, nobody listened.” Medicraft  
 23 Dec. Exh. 3 at 2619:21–23.

25 <sup>7</sup> When the Department commenced the dependency matters in April 2019, it took the children for five days, returning them to Mrs. Medicraft’s custody, despite the NCO, by court order after a contested shelter hearing. Amini Order ¶ 7.

1 The New York No Contact Order

2 At the time of removal, the Medicaft Parents were involuntarily separated to comply  
 3 with an out-of-state no contact order which was entered in the first place against Mr. Medicaft  
 4 due to bureaucratic overreach. Amini Order ¶ 5. After the first removal, the children were  
 5 returned, despite the NCO. Amini Order ¶ 7. Mrs. Medicaft attempted on multiple occasions  
 6 to have the order lifted. *Id.* Even apart from the questionable basis for the NCO, *e.g.* “Mrs.  
 7 Medicaft felt pressured” (Amini Order ¶ 5), it formed no basis to remove the children from  
 8 **Mrs.** Medicaft. WAC 110-30-0030 (5)(c) (“exposure to domestic violence perpetuated  
 9 against someone other than the child does not, in and of itself, constitute negligent treatment  
 10 or maltreatment”). Far from impugning **Mrs.** Medicaft’s ability to parent, it awarded her  
 11 exclusive custody. Medicaft Dec. Exhs. 8, 9.

12  
 13 The NCO was vacated during the dependency, eight months prior to trial. Amini Order  
 14 ¶¶ 5 & 6 and Medicaft Dec. Exh. 10. DCYF admitted in internal email that it should have  
 15 changed course once the order was vacated, but Mr. Leuzzi convinced it not to because he was  
 16 “worried about a tort case if [DCYF] return[ed] the children.” Medicaft Dec. Exh. 1 & Booker  
 17 Dec. The logic behind Mr. Leuzzi’s insistence is sound, but nefarious. If the Medicaft  
 18 Children were returned to their parents, now reunited, before the dependency trial, and all went  
 19 well, that fact would weigh against finding they were unfit parents. DCYF prioritized its own  
 20 litigation strategy, which ultimately failed, over the wellbeing of the children. The same callous  
 21 disregard for the rights of the family was on display when DCYF *opposed* the stipulated  
 22 vacating of the NCO, again prioritizing litigation strategy over “keeping the family unit intact.”  
 23  
 24

25 Post-Removal Deprivation of Family Rights

Ms. Culp, the principal DCYF representative at the trial, “acknowledge[d] on cross-

1 examination that the father's visits were summarily suspended by the Department without a  
2 court order on January 24, 2020.” Amini Order ¶ 31. This, alone, violates RCW 13.34.025.

3 The Department knowingly, or at least negligently, next set the children up for negative  
4 evaluations in connection with the dependency, in another egregious example of DCYF’s  
5 misplaced priorities. JM was evaluated the morning after sleeping in the lobby of the DCYF  
6 Kent office, after getting into a fight with another child. Amini Order ¶ 32. AM was woken  
7 early in Poulsbo for a 5:50am ferry, driven to Kent, then back to Lynnwood for his evaluation,  
8 even though the ferry was only a half hour from the evaluator’s office—the day after being  
9 assaulted by a Phoenix guard. *Id.* ¶¶ 33, 39. EM, too, was transported an unnecessary distance  
10 and placed in a difficult experience directly prior to evaluation. *Id.* ¶ 34. The evaluator was not  
11 informed of these circumstances, which she testified could have affected her evaluation. *Id.*  
12 Judge Amini also found that the Department willfully further misinformed the evaluator, as  
13 her sole source of information. *Id.* ¶¶ 35–37. These failures, some negligent and some willful,  
14 resulted in an ill-founded and unreliable evaluation of the children. Amini Order ¶ 38. Again,  
15 like the failure to change course after the NCO was vacated, DCYF prioritized its litigation  
16 strategy to avoid liability.

### 19 Assaults, Batteries & Failure to Protect

20 Ms. Culp testified that ... DCYF threatened the children with  
21 being sent to the hospital if they did not behave...lost or  
22 misplaced the children's prescribed inhalers and  
23 eyeglasses...that [JM] was assaulted by a security guard,<sup>8</sup> that  
24 on another occasion a security guard threatened to hit [JM] with  
25 a belt; and that [EM] was slapped across the face by a social  
worker. She testified that the children spent some nights either  
at the DCYF office, or in a state issued car. She testified that  
[JM] reported sexual abuse by one of the overnight social  
workers in March/April 2020 and that Department's  
investigation...only started in September 2020.

<sup>8</sup> The “security guards” were agents of Defendant Phoenix Security; they will be the subject of future motions.

1 Amini Order ¶ 24. Ms. Culp was the State's witness. DCYF failed to investigate and could not  
 2 show that it even “acknowledged the numerous bruises on the children, or addressed them in  
 3 any way with the parents,” nor did the Department take steps to protect the children from  
 4 physical injuries. *Id.* ¶ 26. Despite calling the police and taking JM to Children’s Hospital for  
 5 behavior concerns, the Department also failed to provide mental health treatment for JM. *Id.* ¶  
 6 28. DCYF did not even investigate JM’s accusation of sexual abuse. Amini Order ¶ 24.

8 The Children suffered physical abuse at the hands of DCYF workers. Medicraft Dec.  
 9 ¶¶ 11. The Department further endangered the children by sending them to an unlicensed day  
 10 camp, where they suffered further harm. Medicraft Dec. Exhs. 11–14. The State acknowledged  
 11 the need for Phoenix guards to undergo anger management training, and provide daily logs,  
 12 but did not enforce, at least, those provisions of their contract with Phoenix. Arnold Dec. Exh.  
 13 11 & 12. The State allowed these untrained Phoenix guards to repeatedly abuse the Children.  
 14 Medicraft Dec. ¶¶ 13–14 & Exhs. 15–24.

#### 16 Fact of Damage

17 DCYF conceded that the children had serious behavior issues *after* removal. Amini  
 18 Order *passim*. Importantly, the “timeline of the [the children’s] behaviors actually shows that  
 19 the behaviors began and worsened as Department intervention increased.... At different times  
 20 in January and February 2019 [sic], all three children were hospitalized at Seattle Children’s  
 21 Hospital. Prior to their removal, none of the children had required this type of intervention.”  
 22 Amini Order ¶ 48. Before they were removed, JM, AM, and EM’s school counselor gave  
 23 positive reports of their behavior. *Id.* ¶ 49. The children’s issues “immediately escalated after  
 24 removal from their mother.” *Id.* ¶¶ 53, 55. “There was ample evidence that the children’s  
 25

behaviors were better in the care of Ms. Medcraft, both prior to and after removal on December 6, 2020 [sic]. There was ample evidence of Ms. Medcraft being able to successfully manage her children's behaviors." *Id.* ¶¶ 56, 63.

### III. ISSUES PRESENTED

- A. Do the doctrines of *res judicata* and/or collateral estoppel, claim preclusion and/or issue preclusion bar the State and its agents from now challenging the findings of fact and conclusions of law of the Superior Court? *Yes*.
- B. Was the State negligent in its investigation and removal of the Medcraft Children? *Yes*
- C. Was the State negligent where it failed to keep the Medcraft Children reasonably safe from harm? *Yes*
- D. Did the State fail to report suspected abuse of the Medcraft Children? *Yes*
- E. Did agents of the State assault and batter JM? *Yes*
- F. Did agents of the State assault and batter AM? *Yes*
- G. Did agents of the State assault and batter EM? *Yes*
- H. Is the State vicariously liable for the acts and omissions of its agents? *Yes*.
- I. Does RCW 4.24.595 shield the State from liability? *No*.
- J. Was each member of Medcraft family injured by the actions established herein? *Yes*.

### IV. EVIDENCE RELIED UPON

This motion relies upon the Order of the Honorable Susan Amini,<sup>9</sup> and the Declarations filed herewith of Kimberly Booker, Shaylee Medcraft and Nathan J. Arnold, and the balance of filings in this matter.

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<sup>9</sup> Prior to re-assignment of this case to the Hon. Barbara J. Rothstein, DCYF challenged the authenticity of Judge Amini's Order and incorporated Oral Findings and objected to the redactions in the filed copy. Should they continue in those untenable position, a certified copy of the Order, unredacted, will be provided to the court's chambers, as it cannot be filed given the redaction requirements of the court and its Clerk. An authenticated copy of the state court Oral Findings is provided in the supporting materials. Of course, DCYF was also there.

## V. ARGUMENT AND AUTHORITY

### A. Res Judicata and Collateral Estoppel bar re-litigation of claims or issues by the State.

The Full Faith and Credit Act, 28 U.S.C. § 1738, “require[s] all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so.” *Allen v. McCurry*, 449 U.S. 90, 96, 101 S. Ct. 411, 415, 66 L. Ed. 2d 308 (1980) (applying collateral estoppel from prior state court judgment in action under 42 U.S.C. § 1983). Collateral estoppel “is well-known to Washington law as a means of preventing the endless relitigation of issues already actually litigated by the parties and decided by a competent tribunal. Collateral estoppel promotes judicial economy and prevents inconvenience, and even harassment, of parties.” *Reninger v. State Dep’t of Corr.*, 134 Wash.2d 437, 449, 951 P.2d 782, 788 (1998). It requires “(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.” *Id.* (quoting *Southcenter Joint Venture v. National Democratic Policy Comm.*, 113 Wash.2d 413, 418 (1989)); and see *In re Det. of Stout*, 159 Wash.2d 357, 378 (2007) (same elements required to collaterally estop the State). Here, (1) the Medicrafts seek to establish only the specific facts found by the prior state court order (buttressed by additional indisputable evidence included here); (2) Judge Amini’s Order dismissed the Medicraft children’s dependency matters (Amini Order at 12)—it was a final judgment on the merits; (3) DCYF, a Defendant and an arm of the Defendant State of Washington, was party to the consolidated dependency proceedings, *Id. passim*; and (4) there is no injustice in preventing the State from challenging the facts it failed to overcome in a hotly contested, 17-day trial, after nearly a year of investigation. Indeed,

1 relitigation would be unjust to the Medicrafts, particularly the children.

2       *Res judicata*, or claim preclusion, applies when there exists between two separate cases  
 3 (1) identity or privity between the parties, (2) identity of claims, and (3) a final judgment on  
 4 the merits in the first case. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct.  
 5 2424, 69 L.Ed.2d 103 (1981); *Blonder-Tongue Lab v. University of Ill. Found.*, 402 U.S. 313,  
 6 323–24, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971); *Costantini v. Trans World Airlines*, 681 F.2d  
 7 1199, 1201–02 (9th Cir.1982); *Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192  
 8 (9th Cir.1997). A change in the legal theory underlying claims brought in the first round of  
 9 litigation will not defeat *res judicata*. *Mpoyo v. Litton Electro-Optical Systems*, 430 F.3d 985,  
 10 988 (9th Cir.2005).

12       In the state court dependency proceeding, DCYF asserted that it had conducted a  
 13 complete and unbiased investigation complying with applicable duties. Rejecting that claim,  
 14 the state court held: “the investigation wasn’t done correctly or thoroughly.” Medicraft Dec.  
 15 Exh. 3, p. 2619: 21-23. DCYF’s central claim was that it had lawfully taken custody of the  
 16 Medicraft children. The state court held the contrary. Third, because DCYF sought permanent  
 17 custody, it necessarily claimed that its treatment of the Children was appropriate and superior  
 18 to the family unit remaining intact.  
 19

20       The Medicrafts asserted claims and defenses contrary to DCYF’s. They asserted the  
 21 investigation was improper, they asserted their children were wrongfully taken, and they  
 22 asserted the care of their children was not consistent with statute or regulation. The Medicrafts  
 23 prevailed and should not be required to relitigate these issues after a 17-day trial and nearly a  
 24 year of pre-trial family disruption.  
 25

      The depth and breadth of Judge Amini’s findings illustrate that, in contrast to their

1 careless dependency investigation, DCYF left no stone unhurled in their 17-day attempt to  
2 avoid AAG Leuzzi's "worr[y] about a tort case." Indeed, they tried the Dependency *as if it*  
3 *were* a tort case. DCYF cannot now come to this Court and pretend that the Dependency was  
4 about different issues than those in this motion. Indeed, any position by the State that those  
5 matters should be re-tried constitutes a continuation of the state strategy of injuring the children  
6 to avoid or reduce liability.

7  
8 Summary Judgment Standard

9 Summary judgment is appropriate where the Court is satisfied "that there is no genuine  
10 issue as to any material fact and that the moving party is entitled to a judgment as a matter of  
11 law." Fed. Rule Civ. Proc. 56(c). The burden of establishing the nonexistence of a "genuine  
12 issue" is on the party moving for summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
13 330 (1986). This burden has two distinct components: an initial burden of production, which  
14 shifts to the nonmoving party if satisfied by the moving party. *Id.* There is no genuine issue of  
15 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find  
16 for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
17 (1986) (nonmoving party must present specific, significant probative evidence, not simply  
18 some metaphysical doubt).

19  
20 Here there is no genuine issue where the material facts have already been found by  
21 another court of competent jurisdiction. In addition, the Medicrafts provide herein evidence to  
22 support Judge Amini's findings; in the event DCYF is allowed to relitigate these issues at all,  
23 they must produce contradictory evidence on all discrete issues. In this case, the dispute of  
24 any single fact does not, and cannot, offset the quantum of evidence supporting summary  
25 judgment

1 B. The State of Washington was negligent in its investigation of the Medcraft Family

2 The Washington State Supreme Court recently affirmed *Desmet*,<sup>10</sup> setting forth the  
3 standards for claims of negligent investigation. Negligent investigation requires a claimant to  
4 prove the department “gather[ed] incomplete or biased information that results in a harmful  
5 placement decision, such as removing a child from a non-abusive home, placing a child in an  
6 abusive home, or letting a child remain in an abusive home.” *Id.*

7 The State’s failures here also implicate Constitutional rights where due process was not  
8 followed:  
9

10 “Parents and children have a well-elaborated constitutional right to live  
11 together without governmental interference.” *Wallis v. Spencer*, 202  
12 F.3d 1126, 1136 (9th Cir. 2000). “That right is an essential liberty  
13 interest protected by the Fourteenth Amendment’s guarantee that  
14 parents and children will not be separated by the state without due  
15 process of law except in an emergency.” *Id.* Moreover, “the interest of  
16 parents in the care, custody, and control of their children—is perhaps  
17 the oldest of the fundamental liberty interests recognized by [the  
18 Supreme Court].” *Troxel v. Granville*, 530 U.S. 57, 65, 120 S.Ct. 2054,  
19 147 L.Ed.2d 49 (2000).

20 *Hardwick v. Cty. of Orange*, 980 F.3d 733, 740–41 (9th Cir. 2020).

21 *The Department’s Investigation was Incomplete*

22 Judge Amini, in her oral ruling, incorporated into her final written ruling, stated: “the  
23 investigation wasn’t done correctly or thoroughly. And nobody listened, nobody observed,  
24 nobody listened.” Medcraft Dec. Exh. 3, p. 2619: 21-23. Judge Amini’s admonishment of the  
25 Department is emblematic of their negligence toward the Medcraft family:

And my question for the Department is, if you wanted to use  
[Department’s expert], why didn’t you set this up-this-the mid-  
morning? Why didn’t you set it up with the parents, with the  
mother? Why did you set it up this way? Would you do this for

<sup>10</sup> *Desmet v. State by & through Dep’t of Soc. & Health Servs.*, No. 99893-1, 2022 WL 3270004, at \*1 (Wash. Aug. 11, 2022), 514 P. 3d. 1217.

1           yourself? For your child? For your nephew? Niece? Anybody.  
2           Would you set this up? Does-is-does that make sense? Honestly  
3           it doesn't.

4           Medicraft Dec. Exh. 3, 2618:12-19. And Judge Amini was correct, it did not make sense;  
5           especially when viewed in the light of DCYF's fear of tort liability, and unconscionable bias  
6           against the Medicraft family.

7           Independent of Judge Amin's Findings, it is beyond question that the Department's  
8           investigation was not complete.

9           *The Department failed to hold an FTMD*

10          "Family Team Decision Making (FTDM) meetings ... engag[e] the family and others  
11          who are involved with the family to participate in critical decisions regarding the removal of  
12          children from their home..."<sup>11</sup> The FTDM *must* be held prior to "Removing a child and anytime  
13          out-of-home placement of a child is being considered. ... Moving a child from one placement  
14          to another." *Id.* "Participants listed on the Guide to Shared Planning Meetings DCYF  
15          CWP\_0070 publication *must* be: Invited to the FTDM meeting." *Id.* (emphasis added).

16          The Medicraft Family was not afforded an FTDM prior to removal. Arnold Dec.  
17          Exh.10, Sterbick Depo. 61:1 to 63:13, and 82:21-9 and Exh. 13, Sterbick Depo. 21:5 to 23:2,  
18          52:6-15, 65.3-24, and 131:7 to 133:21.       Supervisor Sterbick could not recall another time  
19          that the parents, their attorneys, and the Children's GAL had not been invited to an FTDM  
20          prior to removal. *Id.* 119:1-120:7. At the dependency trial, Ms. Tabitha Culp, DCYF case  
21          worker, testified similarly, that FTDMs are required whenever a child is moved and required  
22          to inform the parents and be documented in the casefile. Arnold Dec. Exh. 14, Dependency  
23          to inform the parents and be documented in the casefile. Arnold Dec. Exh. 14, Dependency  
24          to inform the parents and be documented in the casefile. Arnold Dec. Exh. 14, Dependency  
25          to inform the parents and be documented in the casefile. Arnold Dec. Exh. 14, Dependency

<sup>11</sup><https://www.dcyf.wa.gov/1700-case-staffings/1720-family-team-decision-making-meetings>(August 20, 2022).

1 trial testimony of Tabitha Culp 1761:20-1765:3.

2 If the decision makers, whoever they actually were, had interviewed social workers in  
3 a more complete and unbiased investigation, they would have determined, for example, that  
4 the family had a “[v]ery loving relationship.” Arnold Dec. Exh. 15, Bonnie White Depo., 46:11  
5 to 46:14. The supervisor assigned did not believe removal was in the best interest of the  
6 children. Medicaft Dec. Exh. 4, Sterbick Dependency Depo. 54:22-55:16 and Arnold Dec.  
7 Exh. 1, Sterbick Depo. 111:20-112:8. Other DCYF workers testified that Mr. and Mrs.  
8 Medicaft *were* capable. Amini Order ¶¶ 10 & 18. And Mr. King acknowledged DCYF’s  
9 obligation to promote reunification. Medicaft Exh. 1. Who then, other than AAG Leuzzi,  
10 sincerely believed the family should not remain intact? And did a complete investigation lead  
11 to that belief? Judge Amini found not.

12  
13 The Washington Supreme Court recently took review of a dependency matter, despite  
14 it being moot, “given the substantial public interest involved in keeping families together and  
15 the potential that this issue will further evade review” and issued a unanimous decision  
16 addressing DCYF’s duties. *Matter of Dependency of L.C.S.*, 514 P.3d 644, No. 99792-6, 2022  
17 WL 3270003, at \*1 (Wash. Aug. 11, 2022). Former RCW 13.34.065(a)(i) (now RCW  
18 13.34.065(5)(a)) mandates that: “The court shall release a child alleged to be dependent to the  
19 care, custody, and control of the child's parent, guardian, or legal custodian unless the court  
20 finds there is reasonable cause to believe that:  
21

- 22  
23 (i) After consideration of the specific services that have been  
24 provided, reasonable efforts have been made to prevent or  
25 eliminate the need for removal of the child from the child's home  
and to make it possible for the child to return home;  
ii)(A) The child has no parent, guardian, or legal custo-  
dian to provide supervision and care for such child; or  
(B) The release of such child would present a serious

1 threat of substantial harm to such child, notwithstanding an  
 2 order entered pursuant to RCW 26.44.063; or  
 3 (C) The parent, guardian, or custodian to whom the child  
 could be released has been charged with violating RCW  
 9A.40.060 or 9A.40.070

4 The Department's failures under this mandatory statute were, at least, two-fold. First, it  
 5 deprived the Medcraft Parents of both the requisite FTDM *and* if some actual threat was  
 6 identified there, a Safety Plan. But, like the lack of FTDM, no safety plan was put in place  
 7 before removal. Indeed, this is only allowed under statute if there is no safety threat *and* that  
 8 threat cannot be ameliorated by services. Here, there was no real safety threat, particularly post-  
 9 NCO, only DCYF's fear of liability.

11 *The Department's Investigation was Biased*

12 The Court need not move to bias where it has been conclusively established, and there  
 13 is also no genuine dispute, that the Department's investigation was not complete. But the  
 14 Department's investigation was also biased. At a hearing on February 11, 2020, AAG Derek  
 15 Leuzzi brazenly stated: "if the children are returned home, the State is going to be requesting  
 16 for out-of-home removal." Medcraft Dec. Exh. 25. In other words, "it doesn't matter what this  
 17 court decides, we are taking these children under any circumstances."

19 And Mr. Leuzzi followed through on his threat. Even after Judge Amini ordered the  
 20 family reunited at the conclusion of trial, the Department opened a *new* investigation against  
 21 the Medcrafts and refused to return the children as ordered; Judge Amini then had to step in  
 22 and, once again, order the Department to return the children to their parents. Arnold Dec. Exh.  
 23 16-18. The proof of Mr. Leuzzi's concern over tort liability in the record, renders an  
 24 explanation for DCYF's otherwise inexplicable objection, and its defiance of Judge Amini  
 25 Order.

1 DCYF, bizarrely, complained that the Medcraft Parents' had reported the abuse of  
 2 their Children *while in state custody*. This is further evidence of bias. As Judge Amini found  
 3 "That is appropriate for any parent to do so. That's appropriate for any adult to do so if you  
 4 see a child with bruises and you ask the question." Medcraft Dec. Exh. 3, Oral Ruling of the  
 5 Hon. Susan Amini 2620:19-21. Even if the Medcraft Parents reports were baseless (they were  
 6 not) it would not support dependency. Instructive on this point is *Matter of Dependency of*  
 7 *Q.S.*, No. 38027-1-III, 2022 WL 2047233 (Wash. Ct. App. June 7, 2022):<sup>12</sup> "The law does not  
 8 allow a child to be taken away from a parent because of the parent's anger toward CPS, DCYF,  
 9 or state providers, even if the anger is illegitimate." *Id.* at \*14 (emphasis added). Like in *Q.S.*,  
 10 the State knew that Mrs. Medcraft was herself an abuse victim in foster care and apparently  
 11 failed also to take that into account. Medcraft Dec. ¶ 17. Worse, it quite apparently biased  
 12 DCYF against her.

14 DCYF's reliance on the NCO, which *awarded* custody to Mrs. Medcraft, thus  
 15 establishing her fitness, shows further bias. An NCO is no basis for dependency; indeed, even  
 16 actual domestic violence between parents is not a basis for dependency WAC 110-30-0030  
 17 (5)(c). DCYF's election to take children based on an out-of-state NCO, where the statute does  
 18 not allow it, can only be explained by some other bias. This is particularly so where the  
 19 Department knew that the Medcraft Parents wished to reunify their family and were in the  
 20 process of doing so. Mrs. Medcraft had even requested assistance in that regard from DCYF.  
 21 Medcraft Dec. ¶ 19. The Department has an affirmative duty to take reasonable steps to keep  
 22  
 23  
 24  
 25

---

<sup>12</sup> This Unpublished Opinion is cited pursuant to Washington GR 14.1(a); it is submitted as persuasive, because DCYF was a party, and the quotation is directly relevant to a position taken in the state dependency proceeding by DCYF.

1 children in their home. *See, L.C.S., discussed infra.*<sup>13</sup> Not only did they refuse to help – they  
 2 objected. Mediacraft Dec. ¶ 20. Worse, it carried on its biased investigation even after the  
 3 Mediacrafts had the NCO vacated by the Superior Court. Mediacraft Dec. Exh. 10 & 26.

4       Once its already inadequate premise under the NCO was lost, and instead of focusing  
 5 on the Children’s actual well-being, the Department fabricated a “flight risk.” But, as J. Amini  
 6 found, the mother had always cooperated with DCYF, even after the children were taken the  
 7 first time. In any event, there is no basis in any governing statute for removal for fear that the  
 8 parents may move, that does not pose a risk to well-being. Indeed, “[f]reedom of movement is  
 9 kin to the right of assembly and to the right of association. These rights may not be abridged”  
 10 *Aptheker v. Sec’y of State*, 378 U.S. 500, 520 (1964); *De Jonge v. Oregon*, 299 U.S. 353 (1937);  
 11 *NAACP v. Alabama*, 357 U.S. 449, 460—462 (1958).  
 12

13       Once the NCO was lifted, the State also had an affirmative duty to place the children  
 14 with Mr. Mediacraft, even if it had a valid basis to not return them to Mrs. Mediacraft.  
 15

16               absent the risk of such harm and given the serious long-term  
 17 trauma that removal may cause, the Department is required to  
 18 make reasonable efforts toward both parents to prevent removal  
 19 whenever possible. In this case, although the Department made  
 20 reasonable efforts to maintain placement with the mother, it  
 21 failed to do so for the father, citing emergent circumstances. The  
 22 Department is required to make reasonable efforts for both  
 23 parents.

24 *L.C.S.* at \*8. Of course, if DCYF *successfully* carried out its statutory duty, and the children  
 25 were returned to their parents DCYF would lose its shot at a finding of dependency, and DCYF  
 would be exposed to liability. The bias in that is axiomatic.

Further, in addition to disregard of other statutes, and as further evidence of bias, there

<sup>13</sup> *Matter of Dependency of L.C.S.*, 514 P.3d 644 No. 99792-6, 2022 WL 3270003, at \*1 (Wash. Aug. 11, 2022).

1 was no Court order in place when the children were taken on December 6, 2019. Medcraft  
 2 Dec. ¶ 6-8. The Supervising Social Worker was lied to, and falsely told there was an Order,  
 3 before executing her pick-up. Arnold Dec. Exh. 9, Sterbick Dep. 99:9-101:20.

4 Not only was the State's investigation biased, DCYF's claims to the Dependency Court  
 5 were demonstrably false. Ms. Sterbick testified that the children had bruises from their father's  
 6 abuse; this was false. Medcraft Dec. Exh. 4, Sterbick Dependency Dep. 60:12-62:8. And, as  
 7 Judge Amini found, DCYF's witnesses repeatedly contradicted themselves. Amini Order ¶ 30.  
 8

9 Again, rather than consider the children's wellbeing, and other statutory mandates,  
 10 DCYF engaged in a biased campaign of litigation over child welfare. The Ninth Circuit, has,  
 11 unfortunately, seen this mis-prioritization before:

12 No official with an IQ greater than room temperature in Alaska could  
 13 claim that he or she did not know that the conduct at the center of this  
 14 case violated both state and federal law. The social workers in this case  
 15 are alleged to have knowingly and maliciously violated the law in their  
 attempt to sever [the child's] protected relationship with her mother.

16 *Hardwick v. Cty. Of Orange*, 844 F.3d 1112, 1118–19 (9th Cir. 2017).

17 Post-NCO, Mr. King knew the claimed basis for custody was gone, but he refused to  
 18 prioritize the children nonetheless. Medcraft Exh. 1. The dependency proceeding should have  
 19 been dropped once the NCO was resolved. In this connection, Judge Amini's observation that  
 20 no testimony was brought forth from anyone in New York by DCYF is instructive. Medcraft  
 21 Dec. Exh. 3, 2619:11-24. With its resources, and the extensive efforts undertaken in the trial,  
 22 if evidence from New York was favorable, DCYF could have presented it; it was within the  
 23 trial court's discretion to draw the negative inference that DCYF knew the evidence would not  
 24 be favorable. That both displayed and compounded the bias of DCYF.  
 25

1 C. DCYF failed to keep the Medcraft children free from reasonable risk of harm

2 Once torn from their “[v]ery loving relationship” the State compounded its damage to  
 3 the Medcraft family by failing to keep the children safe. Children “have a substantive due  
 4 process right to be free from unreasonable risk of harm, including a risk flowing from the lack  
 5 of basic services, and a right to reasonable safety.” *Braam v. State of Washington*, 150 Wn. 2d  
 6 689, 699-700, 81 P.3d 851 (2003). Based upon Judge Amini’s findings, and the additional  
 7 evidence provided herewith, the State indisputably failed to keep the Medcraft children free  
 8 from multiple unreasonable risks. Again, if not precluded, DCYF must put forth evidence  
 9 meeting the strictures of *Celotex, supra.* to create a genuine issue of material fact.  
 10

11 The State did the opposite of what is required by *Braam* – it created the unreasonable  
 12 risk of harm. The State then attempted to perpetuate it by willfully setting up the children’s  
 13 evaluations to fail. Amini Order ¶¶ 34-38. The only explanation for DCYF abandoning its  
 14 mission and duties was its belief that a win in family court would cutoff liability; indeed, DCYF  
 15 has a statutory duty to seek reunification, it instead attempted to sabotage the process. Even if  
 16 *res judicata* and/or collateral estoppel did not apply, summary judgment should issue based  
 17 upon the following indisputable evidence.  
 18

19 One of the primary issues in *Braam* was the harm caused children by the separation of  
 20 siblings. The State indisputably separated the Medcraft children. Medcraft Dec. Exh. 27-28.

21 And as Judge Rothstein correctly pointed out in *D.S. v. DCYF*, Cause No. 21-113-BJR:

22 Whatever [counsel for the state] is going to say to the court, I  
 23 don't think he's going to argue that one-night stays at hotels are  
 24 good for these kids.

25 ...

They shouldn't be staying in hotels in the first place.

...

kids should not be sleeping in cars,

...

1 this exceptional-placement program be reorganized in such a  
 2 way that children not end up sleeping in cars, and on the floor of  
 3 offices. That's unacceptable. And without going into great detail  
 now, it has to be violative of at least one, or two, or three statutes.  
 Can't happen.

4 Arnold Dec. Exh. 19.<sup>14</sup> And, as Judge Amini found, the Court's concerns in *D.S.*<sup>15</sup> are exactly  
 5 what the young Medicaft Children were subjected to. Amini Order ¶¶ 24 & 57.

6 The State cannot genuinely dispute that it not only failed to keep the Medicaft Children  
 7 safe from harm, but it actually created the very harm they suffered. The Declaration of Jason  
 8 Bragg outlines a, relatively pedestrian, day of *Braam* violations. Medicaft Dec. Exh. 29. The  
 9 Children had many overnight car stays. Medicaft Dec. Exhs. 30-37. Conditions when the  
 10 Children were forced to stay in the office was little improvement. Medicaft Dec. Exhs. 38-40.  
 11 The Children were forced to stand in the rain as punishment. Medicaft Dec. Exh. 41. The  
 12 Children were deprived of sleep *Id.* Exh. 42.

14 During these unacceptable placements, the children suffered a myriad of physical  
 15 injuries, in addition to the psychological trauma thrust upon them. The Children were abused  
 16 by Phoenix security personnel. Medicaft Dec. ¶¶ 15 & Exhs. 15-24. The Children were also  
 17 placed with much older children, unsupervised, and routinely beaten. Medicaft Dec. ¶ 28 &  
 18 Exhs. 43-44. And the children suffered additional injuries while in state custody. *Id.* Exhs. 45-  
 19 48.  
 20

21 And, despite Article IX of the Washington State Constitution, the Department also  
 22 interfered with the children's education, creating additional harm. Medicaft Dec. ¶¶ 32-33.

23 The State's treatment of the children violated *Braam* in most ways possible and  
 24  
 25

<sup>14</sup> Unfortunately, this practice remains rampant at DCYF. Arnold Dec. Exh. 20.

<sup>15</sup> The Medicrafts congratulate Class Counsel in *D.S.* on their recent approval of settlement.

1 subjected them to treatment which would support dependency if perpetuated by a parent.

2 D. The State of Washington was negligent in their failure to report suspected abuse

3 The Department failed to investigate and could not show that it even “acknowledged  
4 the numerous bruises on the children, or addressed them in any way with the parents,” nor did  
5 the Department take steps to protect the children from physical injuries. Amini Order ¶ 26.

6 RCW 26.44.030 imposes a duty to report suspected child abuse for certain  
7 professionals and supports an implied cause of action against a professional for the failure to  
8 fulfill that duty. *Evans v. Tacoma Sch. Dist. No. 10*, 195 Wash. App. 25, 43, 380 P.3d 553, 562  
9 (2016). DCYF itself is liable: “[t]he duty to report child abuse clearly would be within a District  
10 employee's scope of employment. Therefore, even if the District cannot be directly liable for  
11 the failure to report child abuse, the District can have vicarious liability for the negligence of  
12 its employees.” *Tacoma Sch. Dist. No. 10* at 44.

13 Despite taking JM to the Children’s Hospital for behavior concerns, the Department  
14 failed to provide mental health treatment. Amini Order ¶ 28. As quoted above, Judge Amini  
15 summarizes more or these harms at her Order ¶ 24. And The State cannot argue that it was not  
16 on notice of these concerns. *Medicraft Dec. Exh. 48-50*.

17 Even if Judge Amini’s Findings do not bind the State, which they do, the undisputed  
18 evidence is that DCYF, through its employees, failed its duties.

19 **The Medicraft Family’s Claims Sounding in Assault and Battery**

20 *Assault and Battery Standard*

21 An assault is an attempt to cause apprehension of a harmful or offensive contact.  
22 Restatement Second, Torts § 21. A battery is an intentional and unpermitted contact with the  
23 plaintiff’s person. *McKinney v. City of Tukwila*, 103 Wash. App. 391, 408, 13 P.3d 631, 641  
24  
25

(Div. 1 2000) A plaintiff must prove the following elements to establish a prima facie case of battery: (1) an act by the defendant that results in harmful or offensive contact with the plaintiff's person; (2) intent by the defendant to bring about the harmful or offensive contact; (3) causation; and (4) injury. Restatement Second, Torts § 13.

E. Agents of the State of Washington assaulted and battered JM.

Judge Amini found that JM “was assaulted by a security guard” and “a security guard threatened to hit [JM] with a belt.” Amini Order ¶¶ 33. Independent of that Order, there remains no genuine issue of material fact. At least one of these incidents was egregious enough that the Kent Police were called by DCYF in regard to the assaults and batteries by a Phoenix employee. Mediacraft Dec. Exh 9. DCYF can hardly now claim that was a false report. JM was subjected to further assault and battery at the camp DSHS sent him to. Mediacraft Dec. Exh. 6. The Children were repeatedly assaulted by other Phoenix security guards as well. Mediacraft Dec. ¶¶ 8 & Exhs. 9-14.

F. Agents of the State of Washington assaulted and battered AM.

Judge Amini found that [AM] was “assaulted by a security officer the day before” his evaluation. Amini Order ¶¶ 33, 39 & 48. Judge Amini’s Findings preclude the State from relitigating this issue. Independently, there is no issue of material fact. DCYF cannot avoid liability by arguing either (1) while those batteries and assaults occurred, we didn’t commit any others, or (2) those were “just” “simple assaults” – that is a damages issue. Nor can it be disputed that other state agents assaulted AM. Mediacraft Dec. ¶¶ 13-14 & Exhs. 17, 21-23.

G. Agents of the State of Washington assaulted and battered EM.

Judge Amini found that EM “was slapped across the face by a social worker,” There is no dispute that a social worker assaulted AM; she admitted it under oath. Amini Order ¶¶ 24 and

1 Arnold Dec. Exh 21 (White Dep. 13:25 to 14:9), Exhs. 22-23.

2 H. The State is vicariously liable for the acts of its agents.

3 The law in Washington State is “clear that, once an employee's underlying tort is  
4 established, the employer will be held vicariously liable if ‘the employee was acting within the  
5 scope of his employment.’” *Robel v. Roundup Corp.*, 148 Wash. 2d 35, 52–53, 59 P.3d 611,  
6 620, (2002), *quoting*, *Dickinson v. Edwards*, 105 Wash.2d 457, 469, 716 P.2d 814 (1986).

7  
8 An employee's conduct will be outside the scope of employment  
9 if it “is different in kind from that authorized, far beyond the  
10 authorized time or space limits, or too little actuated by a  
11 purpose to serve the master.” Restatement (Second) of Agency  
12 § 228(2) (1958); see also Restatement, *supra*, § 228(1). This is  
not to say that an employer will be vicariously liable only where  
it has specifically authorized an employee to act in an  
intentionally harmful or negligent manner;

13 *Robel* at 53. The only inquiry is whether the employee was fulfilling his or her job functions  
14 at the time he or she engaged in the injurious conduct. *Id.* This is not a case where any State’s  
15 agent “steps aside from the master's business in order to effect some purpose of his own.” *Id.*  
16 at 54. It is not disputed that the actions of all DCYF employees were fulfilling job functions;  
17 they were exercising custodial prerogatives over the children.

18 The State is also vicariously liable for the acts of Phoenix guards engaged as contractors  
19 with the state. An exception to the general rule that one who employs a general contractor is  
20 not liable for injuries sustained by independent contractor's employees is where an employer  
21 of an independent contractor retains control over some part of the work. *Afoa v. Port of Seattle*,  
22 247 P.3d 482 (Wash. Ct. App. Div. 1 2011).  
23

24 The State exerts control over the security guards. By express contract, Phoenix  
25 personnel were required to “enforce the DSHS Codes of Conduct”. Medicaft Dec. Exh. 51.

1 The Department also controlled Phoenix personnel's day to day assignment: "Locations of  
 2 coverage may vary, depending upon location and needs of the youth, Uniform Officers will  
 3 contact the DCYF After Hour Supervisor (See DCYF Supervisor Schedule below) before the  
 4 start of their shift, to receive exact location of coverage needs." Medcraft Dec. Exh. 52  
 5 Security guards were required to "respond to" (*i.e.* be directed by) DCYF staff while on shift.  
 6 Medcraft Dec. Exh. 53.

7 K. RCW 4.24.595(2) shields neither the State nor its agents<sup>16</sup>

8 RCW 4.24.959(2) states:

9  
 10 (2) The department of children, youth, and families and its  
 11 employees shall comply with the orders of the court, including  
 12 shelter care and other dependency orders, and are not liable for  
 13 acts performed to comply with such court orders. In providing  
 14 reports and recommendations to the court, employees of the  
 department of children, youth, and families are entitled to the  
 same witness immunity as would be provided to any other  
 witness.<sup>17</sup>

15 This statute has no application here, however. First, there was no court order that the children  
 16 be slapped in the face, forced to sleep in cars, and the significant other abusive conduct  
 17 complained of. Second, there was no Court order on December 6, 2019, when they took the  
 18 Medcraft Children from their mother. Third, RCW 4.24.959(2) does not apply to negligent  
 19 investigation or to negligent infliction of emotional distress claims. *Desmet*. Fourth, the statute  
 20 does not apply to the "act of providing false information and misrepresenting evidence to the  
 21 juvenile court." *Id.* at 312.

22 *Desmet* was affirmed by the Washington State Supreme Court on August 11, 2022:

23  
 24  
 25 <sup>16</sup> The State's other affirmative defenses fail for the same reasons articulated at ECF No. 110 and will be the subject  
 of future motion if on-going attempts to compromise break-down.

<sup>17</sup> RCW 4.24.959(1) deals with "emergency placement" and has no application here because the Medcraft's claims  
 relate to actions after the initial shelter care hearing. *Desmet* at 311.

1 The plain language of RCW 4.24.595(2) grants the Department  
 2 liability immunity for complying with court orders. This court  
 3 has established that the Department's investigative function is  
 4 mandated by statute and is, thus, wholly separate from court  
 5 orders and proceedings. Should the Department's negligence  
 6 have caused an unnecessary and prolonged disruption of the  
 7 family unit in this case, RCW 4.24.595(2) will not shield it from  
 8 suit simply because the Department convinced the court to  
 9 continue A.K.'s shelter care placement.

10 *Desmet v. State by & through Dep't of Soc. & Health Servs.*, No. 99893-1, 2022 WL 3270004,  
 11 at \*8 (Wash. Aug. 11, 2022) (internal citations omitted). And, just as the investigative function  
 12 is a creature of statute, so too is the State's obligation to keep family units intact. None of the  
 13 acts alleged by the Medicrafts, relevant to this motion or otherwise, were done *pursuant to* a  
 14 court order. RCW 4.24.959(2) does not apply.

#### 15 L. Fact of Injury

16 Although the Medicrafts reserve their damages for future motions practice or trial, they  
 17 acknowledge that fact of damages must be established; it was so established by Judge Amini.  
 18 None of the children required psychological intervention prior to being taken into the State's  
 19 custody. Amini Order ¶ 48.

20 Regarding the Medicraft children's assault and battery claims, whether contact is  
 21 harmful or offensive is determined by the standard of what would be harmful or offensive to  
 22 an ordinary person. *Kumar v. Gate Gourmet Inc.*, 180 Wash. 2d 481, 325 P.3d 193 (2014);  
 23 *Sutton v. Tacoma School Dist. No. 10*, 180 Wash. App. 859, 324 P.3d 763, (Div. 2 2014);  
 24 Restatement Second, Torts § 19; Prosser & Keeton on Torts § 10 (5th ed. 1984). DCYF can  
 25 make no argument that threats by Phoenix guard, working for the State, to beat a child with a  
 belt, or a social worker actually slapping another child across the face, a Phoenix guard

1 throwing a child hard enough that the police are called, or nearly asphyxiating another,<sup>18</sup> does  
 2 not contain a quantum of harm to a child, especially when perpetrated by those supposed to  
 3 protect them. And Judge Amini also found that the children's behavioral issues accelerated in  
 4 State's custody. Amini Finding ¶¶ 48, 49, 56.

5 The Medcraft children have all been damaged by removal, the State's failure to protect,  
 6 and the State's inflicting harm upon the Children.

7  
 8 Removal carries long-term risk of serious emotional and  
 9 psychological harm to the child. See Shanta Trivedi, The Harm  
 10 of Child Removal, 43 N.Y.U. Rev. of L. & Soc. Change 523,  
 11 527-41 (2019). It is important that courts consider not only the  
 12 potential harm of remaining at home but also the trauma and  
 13 harm that may come from removal. See Vivek Sankaran,  
 14 Christopher Church & Monique Mitchell, A Cure Worse Than  
 15 the Disease? The Impact of Removal on Children and Their  
 16 Families, 102 Marq. L. Rev. 1161, 1165-71 (2019) (detailing  
 17 the traumas associated with removal and placement in foster  
 18 care).

19 *L.C.S.* at \*7. "The harm of changing foster homes often overweighs the harm of keeping a child  
 20 with a subpar inadequate parent." *Q.S.* at \*14.

21 There is no fairly debatable issue that removal is harmful, the Washington Supreme  
 22 Court has held it is. Mrs. Sterbick testified that it "always" is. Here, even if the State could, in  
 23 this procedural posture, satisfy the Court under *Celotex*, that its initial removal was appropriate,  
 24 it cannot explain how, eight months prior to trial, once the NCO was vacated, Mr. Leuzzi's  
 25 fear of tort liability outweighed statutory commands to keep the family unit intact which,  
 independently, allowed the perpetuation of physical abuse.

Separation is so harmful that even a 22-day disruption of the family unit has been

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<sup>18</sup> Both throwing a child and interfering with a child's breathing are presumptively unreasonable even if done by an actual parent. RCW 9A.16.100.

1 deemed ‘not minimal’ and the court erred in granting those parents’ request for a continuance.  
 2 *Matter of Dependency of T.P.*, 12 Wash. App. 2d 538, 547, 458 P.3d 825, 830. The action of  
 3 taking the Medcraft Children from their parents is equivalent to, if not worse, than screaming  
 4 into a child’s ear “your parents are terrible people.”

5 While those of us who have reached maturity and had our own children, may forget  
 6 how badly a frightened child wants his or her mother or father, it simply cannot be argued that  
 7 a child wrongfully held in strange hotels rooms, forced to sleep in cars or on office floors,  
 8 pinned down and beaten by adults who should have been protecting them, were not injured  
 9 thereby and, independently, by the absence of their parents - even soldiers on the battlefield  
 10 scream for their mothers. A quantum of damage is undisputable, its breadth is addressed by  
 11 experts, with more expert opinion to be provided, to include employment and future earning  
 12 potential, further demonstrating that damage is beyond reasonable debate. Arnold Dec. Exh.  
 13 2-8.  
 14  
 15

## 16 VI. CONCLUSION

17 The Medcraft Children were torn from a “[ver]y loving relationship[.]” by an  
 18 “investigation [that] wasn’t done correctly or thoroughly,” during the pendency of which they  
 19 should have been at home with their parents, particularly after the NCO was vacated. Even  
 20 then, instead of keeping the family unit intact, DCYF prioritized AAG Leuzzi’s worry “about  
 21 a tort case if we return to the parents.”

22 DCYF compounded the injury by not only failing to keep the children safe from the  
 23 risk of harm, but by creating and exacerbating many of the harms which befell them, including  
 24 its agents directly assaulting them.  
 25

Fact of injury is beyond debate. “Whatever [counsel for the state] is going to say to the

1 court, I don't think he's going to argue" that any jury could find excuse for the treatment of this  
2 family.

3 Partial summary judgment should issue to narrow issues for those jurors and conserve  
4 judicial resources.

5 The undersigned certifies that he met and conferred with counsel for the State, both  
6 prior counsel, Ms. Janay Ferguson, and current counsel, Mr. Peter Kay, prior to bringing this  
7 motion.  
8

9 DATED this 31st day of December 2022.

10  
11 **ARNOLD & JACOBOWITZ PLLC**

12 /s/ Nathan J. Arnold

13 Nathan J. Arnold, WSBA No. 45356

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17 Nathan@CAJLawyers.com

18 *Counsel for Plaintiff*  
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23  
24  
25

**CERTIFICATE OF SERVICE**

I hereby certify that on December 31, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court Western District of Washington by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

DATED this 31st day of December 2022.

/s/ Nathan J. Arnold  
Nathan J. Arnold, WSBA No. 45356